

REMARKS

The applicant respectfully requests reconsideration in view of the amendment and the following remarks. Support for newly added claim 25 can be found in claim 12. Support for newly added claims 26-27 can be found in the examples. A fee of \$50.00 can be charged to our Deposit Account No. 03-2775, under Order No. 12810-00039-US from which the undersigned is authorized to draw for the extra total claim over 20.

Claims 14-20 and 23 are rejected under 35 U.S.C. 112, as failing to comply with the written description requirement. Claims 6 and 10-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hossel et al. (US 2001/0021375 A1, cited previously, hereafter "Hossel '375"). Claims 6 and 8-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hossel '375, in view of Hossel et al. (US 6,191,188 B1, cited previously hereafter "Hossel '188"). The applicant respectfully traverses these rejections.

35 U.S.C. 112 Rejection

Claims 14-20 and 23 are rejected under 35 U.S.C. 112, as failing to comply with the written description requirement. The Examiner states that the ingredient is never required and is optional however, as the Examiner stated the specification has support for the upper limit. Since claims 14-20 and 23 are dependent claims, the applicant now further requiring monomer D (claim 14) and monomer E (claim 15). These claims further limit the independent claim. As defined by the term "optional" the component can be present or absent. If the component is present it can't be present in more than the upper limit. The applicant believes that support for the monomer D and E be present can be found in the term "optional" which by definition means it can be present. The MPEP section 2163.05 "Changes to the Scope of Claims [R-2] – 2100 Patentability" states:

a. III. RANGE LIMITATIONS

With respect to changing numerical range limitations, the analysis must take into account which ranges one skilled in the art would consider inherently supported by the discussion in the original disclosure. In the decision in *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976), the ranges described in the original specification included a range of "25%- 60%" and specific examples of "36%" and "50%." A corresponding new claim limitation to "at least 35%" did not meet the description requirement because the phrase "at least" had no upper limit and caused the claim to read literally on embodiments outside the "25% to 60%" range, however a limitation to "between 35% and 60%" did meet the description requirement.

The applicant believes that they are in the situation of *In re Wertheim*. The courts have further stated that for written in *Union Oil Company of California v Atlantic Richfield Company* 208 F.3d. 989, 997; 54 U.S.P.Q. 2d. 1227 (CAFC 2000) held that the written description requirement does not require the applicant "to describe exactly the subject matter claimed [instead] the description must clearly allow persons of ordinary skill in the art to recognize that [he or she] invented what is claimed". Further, *In re Norman K. Alton et al.*, 76 F.3d. 1168; 37 U.S.P.Q. 2D 1578 (CAFC 1996) the Court also referred to *In re Wertheim*. The Court held, "If, on the other hand, the specification contains a description of the claimed invention, albeit not *in ipsius verbis* (in the identical words), then the examiner or Board, in order to meet the burden of proof, must provide reasons why one of ordinary skill in the art would not consider the description sufficient."

The applicant has narrowed the range limitation. The applicant believes that the description is clear to one of ordinary skill in the art. Components d) and e) are optional components since the lower limit is 0. Therefore, components d) and e) can also be present. The upper limit is clearly supported. The specification further supports that components d) and/or E) can be present. It is also noted that in the example 2 that monomer d) and polymer E can be present (see page 36, lines 21-24) which states:

VP-VCap-VI copolymer systems comprising a **further monomer D** (Ex. 2d) **or** polymerized in the **presence of a polymer E** (Ex. 2a) + 2b)) or comprising **further monomer D and polymerized in the presence of a polymer E** (Ex. 2c). (emphasis added)

For the above reasons, this rejection should be withdrawn.

Prior Art Rejections

Claims 6 and 10-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hossel '375. Claims 6 and 8-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hossel '375, in view of Hossel '375.

The applicant believes that the claims are patentable. The applicant further believes that the new claims are clearly patentable since they are narrower then the current independent claim. Furthermore, these claims are clearly commensurate in scope with the unexpected showing for clarity in the examples in the specification. See tables 1 and 2 in the specification. For the above reasons, this rejection should be withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no additional fee is due with this response other than the fee for the extra claim over 20. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 12810-00039-US from which the undersigned is authorized to draw.

Dated: September 11, 2008

Respectfully submitted,

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ENCLOSURE: CITED CASES